



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
Canberra ACT 2601

6 September 2012

File No: 2012/018961

[Redacted]

[Redacted]

Dear [Redacted],

Freedom of Information Request

I refer to your email dated 30 May 2012 in which you request access to documents held by the Australian Customs and Border Protection Service (Customs and Border Protection) under the *Freedom of Information Act 1982* (the FOI Act).

I am authorised under section 23 the FOI Act to make decisions to release and to refuse access to exempt documents.

Scope of Request

The scope of your request includes:

- (1) *a copy of a final report referred to at Senate Estimates on 14 February 2012 supplied by the IOM concerning a campaign run between November 2009 and August 2010 in Indonesia with the key message: "I know smuggling illegal immigrants is wrong";*
- (2) *a copy of the "research" referred to at Senate Estimates on 14 February 2012 indicating "a significant lack of awareness of issues surrounding irregular migration among PII's" in Indonesia and the resulting decision to target future communication campaigns directly to PII's;*
- (3) *any research reports relating to the rationale/design and the results/evaluation of counter-people smuggling communications activities carried out in Malaysia, Indonesia, Persia/Mesopotamia and Australian Pipeline from 2009 to the present or research relating to future campaigns of this kind;*
- (4) *documentation about the rationale and design for, as well as the results and evaluation of, communications activities such as this - relating to both communication direct to potential irregular maritime arrivals located in/transiting through Malaysia and Indonesia, and to communication to members of local communities who may potentially seek involvement in smuggling operations."*

On 6 July 2012, you agreed to narrow the scope of your request to include only those documents referred to above that relate to Indonesia and Malaysia, excluding those documents relating specifically to Persia/Mesopotamia. You asked that documents that focus on the rationale/strategy/evaluation of the communications campaigns as a whole and that would therefore have relevance to Indonesia and Malaysia should be included.

Charges

On 18 June 2012, Customs and Border Protection notified you of the estimated charges associated with the processing of your request in the sum of \$4,553.30.

Upon limiting the scope of your request, a large number of documents were removed from the scope of the request.

On 13 July 2012, Customs and Border Protection agreed to reduce the charges to be imposed in this matter to \$896.12, based on the revised scope of your request. On 2 August 2012, you accepted the imposition of those charges, and paid the deposit of \$224.03.

According to subregulation 11(1) of the *Freedom of Information (Fees and Charges) Regulations*, where an applicant is liable to pay a charge in relation to accessing a document, the agency must collect charges before documents are released to the applicant.

An invoice is attached for the balance of the charges due in relation to this request. Upon receipt of the outstanding amount of \$672.09 Customs and Border Protection will provide you with access to the documents released in response to your request.

Consultation

Customs and Border Protection consulted two organisations prior to making a decision on access to the documents numbered 5, 6, 7, 8, 12 and 13 under section 27 and 47G of the FOI Act. It appeared to Customs and Border Protection that these organisations might reasonably wish to contend that providing access to information regarding their business was unreasonable and contrary to the public interest.

Decision on access

Customs and Border Protection has identified 15 documents that fall within the reduced scope of your request. These documents were in the possession of Customs and Border Protection on 30 May 2012 when your FOI request was received.

I make the following decision in relation to those documents:

- Release ten documents in part with deletions; and
- Release five documents in full.

A schedule of these documents is at **Attachment A** for your reference.

I have provided detailed reasons for my decision below.

Reasons for Decision

The schedule of 15 documents that fall within the scope of your request at Attachment A sets out the decision on access and, where appropriate, refers to various sections of the FOI Act. My reasoning in relation to the application of each section to particular documents is set out below.

1 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

I consider that the release of parts of documents numbered 2, 3, 4, 5, 6, 7, 8 and 15 would, or could reasonably be expected to cause damage to the Commonwealth's international relations.

I am of the view that the disclosure of the documents could reasonably be expected to inhibit future cooperation and/or partnership arrangements between the Australian Government and a foreign government and/or International Organisation.

I have therefore decided that parts of documents numbered 2, 3, 4, 5, 6, 7, 8 and 15 are exempt from disclosure under section 33(a)(iii) of the FOI Act.

2 Sections 37 of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety

I have decided that parts of documents 1, 2, 3 and 4 would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigation, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

This information relates to methods that may be used in relation to future campaigns. Disclosure of this information will increase the target audiences understanding of the nature and approach of any future campaigns, which would prejudice their effectiveness, thereby reducing Customs and Border Protection's ability to protect the borders of Australia.

Therefore, I am of the view that this information is exempt from disclosure under section 37(2)(b) of the FOI Act.

3 Section 47C of the FOI Act – Deliberative Processes

I consider that parts of documents numbered 1, 2, 3 and 4 contain deliberative matter in the form of opinion, advice and recommendations related to the options available to Customs and Border Protection in relation to campaigns of this nature.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

The information satisfies the conditional exemption in section 47C of the FOI Act.

As I have decided that parts of documents 1, 2, 3 and 4 are conditionally exempt, I am now required to consider whether access to those documents would be contrary to the public interest (section 11A of the FOI Act). I have outlined the relevant public interest considerations below.

4 Section 47E of the FOI Act – Operations of Agencies

I have decided that the disclosure of parts of documents 1, 2, 3 and 4 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Customs and Border Protection. Accordingly, these documents are conditionally exempt under section 47E(d) of the FOI Act.

As I have decided that parts of documents 1, 2, 3 and 4 are conditionally exempt, I am now required to consider whether access to those documents would be contrary to the public interest (section 11A of the FOI Act). I have outlined the relevant public interest considerations below.

5 Section 47F of the FOI Act – Personal Privacy

The disclosure of parts of documents numbered 1, 2, 5, 6, 7, 8 and 12 would disclose personal information relating to third parties. Some of the information would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance. Documents numbered 5, 6, 7 and 12 include photographs of members of the public, some of which include images of children with their families.

I consider that the disclosure of the information within these documents would involve an unreasonable disclosure of personal information about a number of individuals. Accordingly, I have decided that parts of these documents are conditionally exempt under section 47F of the FOI Act.

As I have decided that parts of documents 1, 2, 5, 6, 7, 8 and 12 are conditionally exempt, I am now required to consider whether access to those documents would be contrary to the public interest (section 11A of the FOI Act). I have outlined the relevant public interest considerations below.

6 Section 47G(1)(a) of the FOI Act – Business Affairs

I consider that part of document numbered 3 contains information concerning the business, commercial or financial affairs of an organisation. I am of the view that the disclosure of this information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

Accordingly, I have decided that part of document numbered 3 is conditionally exempt under section 47G of the FOI Act.

As I have decided that part of document numbered 3 is conditionally exempt, I am now required to consider whether access to those documents would be contrary to the public interest (section 11A of the FOI Act). I have outlined the relevant public interest considerations below.

7 The public interest – section 11A of the FOI Act

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in subsection 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

Having regard to the above the following factors favour disclosure:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within Customs and Border Protection, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the documents:

- I am satisfied that you do not require access to the document in order to access your own personal information or to contribute to the administration of justice for yourself or another person.
- The disclosure of the personal information of individuals contained in documents numbered 1, 2, 5, 6, 7, 8 and 12 could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is Customs and Border Protection's view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.
- I consider that the disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice law enforcement functions and, as a result, Customs and Border Protection's ability to protect Australia's borders. I consider that this factor weighs heavily against disclosure.
- I consider that the disclosure of the information that is conditionally exempt under s47C of the FOI Act is contrary to the public interest because the target audiences understanding of the nature and approach of a campaign would prejudice its effectiveness, and would enable people smugglers to develop their own counter strategies, thereby reducing Customs and Border Protection's ability to protect the borders of Australia. I consider that is factor weighs heavily against disclosure of this conditionally exempt information.

- I consider that the disclosure of the information that is conditionally exempt under section 47G(1) of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of an organisation.

I have also had regard to subsection 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- access to the document could result in any person misinterpreting or misunderstanding the document;*
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;*
- access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

8 Section 22 of the FOI Act – deletion of exempt material

I have decided to prepare an edited copy of documents numbered 1, 2, 3, 4, 5, 6, 7, 8, 12 and 15 in the schedule of documents. The grounds upon which the edited copy of these documents has been prepared are set out in the Schedule of Documents.

The remainder of the documents have been released to you as they are relevant to your request.

Legislation

I have attached an extract of the exemption provisions of the FOI Act and the public interest test for your information at **Attachment B**.

Your Review Rights

The FOI Act grants you rights to have my decision reviewed.

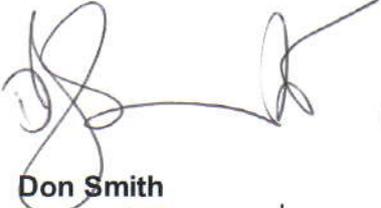
Information regarding your review rights is available in the Office of the Australian Information Commissioner's FOI Fact Sheet 12 at **Attachment C** for your reference.

Making a Complaint

At **Attachment D** is FOI fact sheet 13 from the OAIC. This sets out how you may complain to the Australian Information Commissioner if you have concerns about how Customs and Border Protection has handled your request for documents under the FOI Act.

Contact

Should you wish to discuss my decision, please do not hesitate to contact Ms Emily Winch, Customs and Border Protection's FOI Coordinator on 02 6275 5621 or via email at foi@customs.gov.au.

A handwritten signature in black ink, appearing to read 'Don Smith', with a long horizontal stroke extending to the right.

Don Smith
National Manager | Counter People Smuggling Taskforce
Australian Customs and Border Protection

ATTACHMENT A

Schedule of Documents

	Date of document	No. of pages	Description	Decision on release	
1.	Oct 2010	5	Ministerial Briefing: Minister for Home Affairs - People Smuggling: Proposed New Direction for Strategic Communications.	Release in part	s37(2)(b) s47E(d) s47C s47F
2.	2 Sep 2010	2	Minute to National Director, Law Enforcement Strategy Division re. People Smuggling: New Direction in Strategic Communications.	Release in part	s33(a)(iii) s37(2)(b) s47E(d) s47C s47F
3.	20 Mar 2012	8	Maritime People Smuggling Strategic Communications Strategy 2011/2012 and 2012/2013	Release in part	s33(a)(iii) s37(2)(b) s47E(d) s47C s47G(1)
4.	Nov 2011	37	Strategic Assessment of Counter People Smuggling Communications Activities November 2011.	Release in part	s33(a)(iii) s37(2)(b) s47E(d) s47C
5.	Sep 2010	98	Final Activities Report – Public Information Campaign to Curb Irregular Migration and People Smuggling in Indonesia.	Release in part	s47F s33(a)(iii)
6.	1 Sep 2010	40	Interim Activity Report - Anti-People Smuggling Public Information Campaign “aku tau penyelundupan imigran illegal itu salah” (I know people smuggling is wrong)	Release in part	s33(a)(iii) s47F
7.	23 Mar 2010	73	Final: People Smuggling Public Information Campaign Strategy	Release in part	s33(a)(iii) s47F
8.	22 Feb 2010	67	Market Research Report – Irregular Migrant People Smuggling Public Information Campaign (Indonesia)	Release in part	s47F s33(a)(iii)
9.	1 Apr 2011	7	People Smuggling Public Information Campaign Status – PowerPoint presentation - April 2011 (re. Afghans and Sri Lankans)	Release in full	
10.	1 Dec 2010	11	People Smuggling Public Information Campaign Status – PowerPoint presentation – Dec 2010 (re. Afghans and Sri Lankans)	Release in full	
11.	2 Feb 2011	9	People Smuggling Public Information Campaign Status – PowerPoint presentation – Feb 2011 (re. Afghans and Sri Lankans)	Release in full	
12.	May 2011	68	Malaysian Public Information Campaign: Post Implementation Report: May 2011	Release in part	s47F
13.	2010	24	Malaysian Public Information Campaign: Interim Report: 2010	Release in full	
14.	1 Nov 2010	9	Counter People Smuggling Public Information Campaign Update – Nov 2010 (re. Afghans and Sri Lankans in Malaysia)	Release in full	
15.	9 Oct 2009	1	Statement of Requirement – Malaysian Counter-People Communications Campaign	Release in part	s33(a)(iii)

ATTACHMENT B

Relevant Legislation

Section 33 - Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:

...

- (iii) the international relations of the Commonwealth; or

...

Section 37 - Documents affecting enforcement of law and protection of public safety

...

- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

...

- (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

...

- (3) In this section, **law** means law of the Commonwealth or of a State or Territory.

Section 47C - Public interest conditional exemptions—deliberative processes

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or
(b) a Minister; or
(c) the Government of the Commonwealth; or
(d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
(b) purely factual material.

- (3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Section 47E - Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Section 47F - Public interest conditional exemptions—personal privacy

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

...

Section 47G - Public interest conditional exemptions—business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

...

11B - Public interest exemptions—factors

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

Section 22 - Access to edited copies with exempt or irrelevant matter deleted

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and

- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

...



FOI fact sheet 12

Freedom of information – Your review rights

April 2011

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

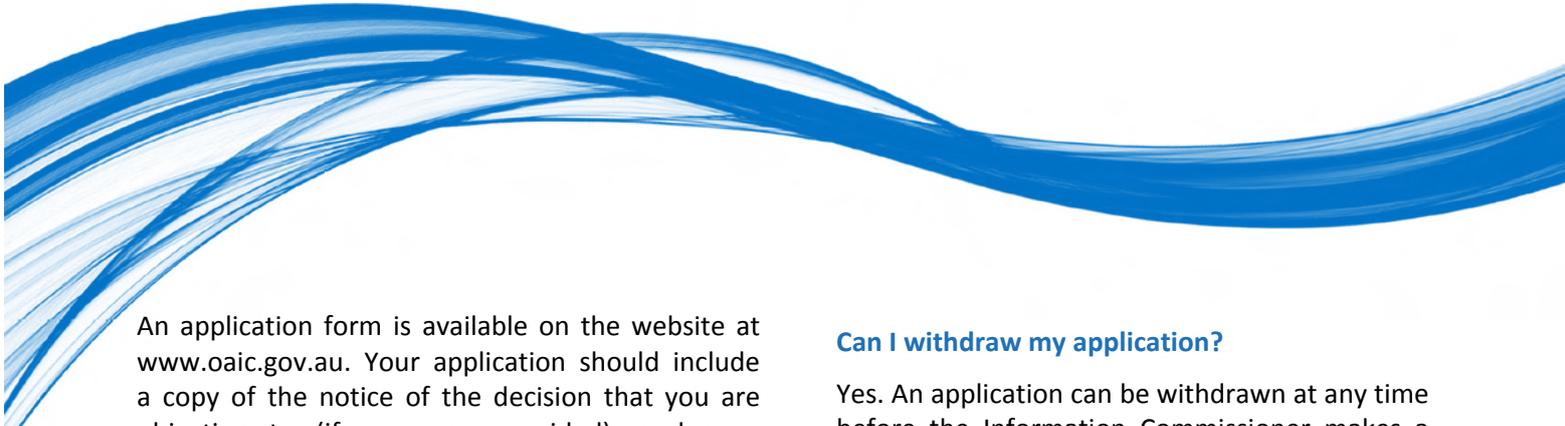
online: www.oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

fax: +61 2 9284 9666

email: enquiries@oaic.gov.au

in person: Level 3,
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au



FOI fact sheet 13

Freedom of information – How to make a complaint

October 2010

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See **FOI Fact Sheet 12 Freedom of information – Your review rights** for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.



How do I make a complaint?

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also available on our website at www.oaic.gov.au.

If you need help we can assist you. You can contact us on 1300 363 992 or by email to enquiries@oaic.gov.au.

What information do I need to put in the complaint?

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

Is there a fee for making a complaint?

No. There are no costs involved in making a complaint to the Information Commissioner.

What will happen to my complaint?

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

Can the Information Commissioner decide not to investigate my complaint?

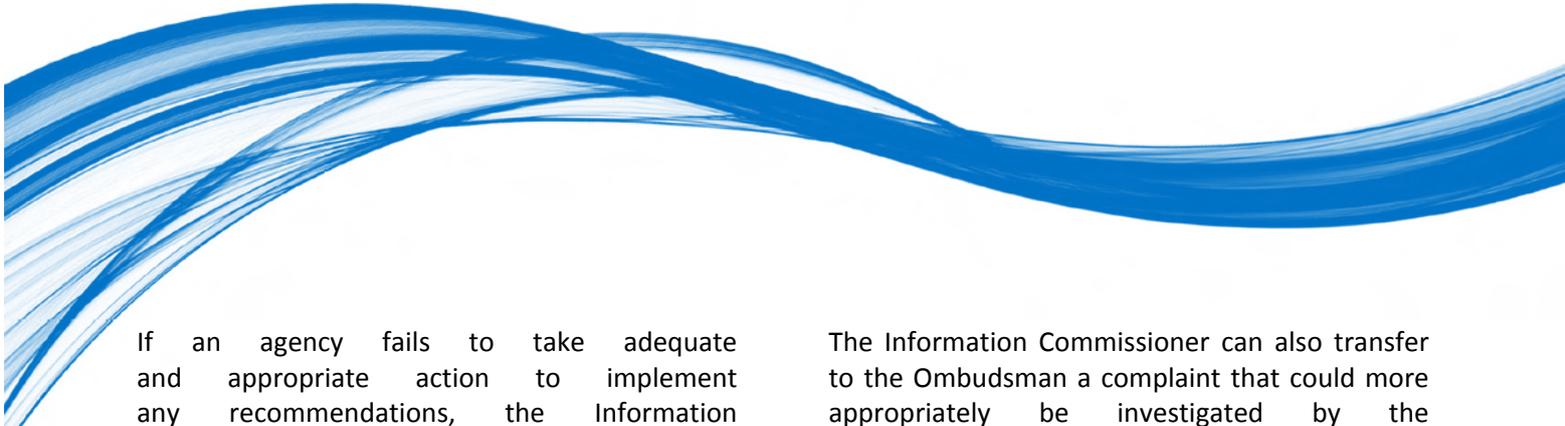
Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

How will my complaint be resolved?

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.



If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.

Your name will not be included in the report unless there is a special reason and you were first consulted.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601

or visit our website at

www.oaic.gov.au